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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SAM ALLEN,

Plaintiff,

vs.

CORNELIUS AARON PETTUS, JR.

Defendant.

Case No. 3:21-cv-00136-JMK

DEFENDANT'S PARTIAL NON-OPPOSITION TO PLAINTIFF'S MOTION
TO COMPEL DISCOVERY

Defendant Cornelius Aaron Pettus Jr., by and through counsel Sedor, Wendlandt, Evans & Filippi, LLC, hereby partially non-opposes Plaintiff's motion to compel discovery of video of the event in question, statements, and interviews relating to the incident pursuant to Federal Rule of Civil Procedure 26(a) and 37(c).

Defendant previously faced federal¹ and state² criminal charges. As a consequence of those pending criminal matters, the parties filed a joint stipulation to extend deadlines.³ The parties filed another joint stipulation to extend pretrial deadlines on November 4, 2022 because Defendant's criminal cases were not yet fully resolved.⁴ Defendant's state criminal matter was resolved via dismissal as of December 12, 2022. Defendant's federal criminal matter was resolved via Judgment of Discharge as of December 13, 2022.⁵

Defendant acknowledges that Plaintiff, through counsel has sought disclosure of the law enforcement video from the incident on September 30, 2019 which is the basis of Plaintiff's lawsuit. Defendant acknowledges that such video is in the possession of Defendant's counsel. Defendant further acknowledges that Plaintiff is entitled to disclosure of the video. Defendant is concerned that the video, as well as the investigative recorded interviews, reports, photographs, chain of custody documents, and other related documents and materials were collected and prepared by the Anchorage Police Department, the Federal Bureau of Investigation, and the U.S. Attorney's Office for the District of Alaska for the purpose of the criminal prosecution of Defendant in the two aforementioned

¹ Case No. 3:20-cr-00100-SLG.

² *State of Alaska v. Cornelius A. Pettus, Jr.*, Case No. 3AN-19-10036 CR.

³ Docket 30.

⁴ Docket 33.

⁵ See Case No. 3:20-cr-00100-SLG at Docket 100.

criminal cases. Defendant acknowledges that his criminal cases have been resolved but cannot aver that the criminal process related to the investigations is fully resolved. Defendant is concerned that the law enforcement agencies may object to Defendant's disclosure of their investigative reports, recorded interviews, grand jury subpoenas, and other materials from investigations without proper authorization.

Defendant advises this Court that Plaintiff's counsel does not appreciate the volume of discovery his motion to compel may impact. In *State v. Pettus*, Case No. 3AN-19-10036 CR, Defendant received nearly 2,500 pages in discovery from the State of Alaska, as well as a significant number of digital photographs, audio recordings, and video recordings. In *United States v. Pettus*, Case No. 3:20-cr-00100-SLG-MMS, Defendant received more than 7,800 pages in discovery as well as additional audio recordings and digital evidence.

Defendant can only produce what has been received and is unable to make any representations that what was received encompasses all of the relevant materials from the September 30, 2019 incident and subsequent investigations that may be in the possession of law enforcement agencies, including, but not limited to the Anchorage Police Department, the Federal Bureau of Investigation, and the U.S. Attorney's Office.⁶

⁶ Defendant also received materials from the Alaska Department of Corrections in connection with Case No. 3AN-19-10036 CR as a result of Plaintiff's incarceration at the Anchorage Correctional Complex following his arrest by Defendant on September 30, 2019.

Defendant is not opposed to disclosure of these materials to Plaintiff but believes Plaintiff should have sent subpoenas to the agencies who possess and control the materials he seeks in his motion to compel. Defendant asks this Court to require Plaintiff to either issue subpoenas and or a proposed order to those agencies. He has not explained why he did not seek disclosure of the materials sought in this motion through subpoena to the agencies who were responsible for such materials.

Defendant asks this Court to require Plaintiff to clarify his motion, i.e., is he seeking disclosure of all the discovery received by Defendant in both criminal cases, or only the video of the incident that forms the basis of this lawsuit. If Plaintiff is truly seeking all of the discovery materials from the criminal cases, and if the Court is inclined to grant Plaintiff's motion to compel, Defendant requests a reasonable period of time to produce the records to Plaintiff.

If the Court is inclined to grant Plaintiff's motion to compel, Defendant requests and believes a protective order is warranted to ensure that the use of the disclosed materials are limited to what is required for Plaintiff to prepare his prosecution of this lawsuit. A proposed protective order accompanies this Opposition.

Respectfully submitted this 23rd day of February, 2023.

SEDOR, WENDLANDT, EVANS & FILIPPI, LLC
Attorneys for Defendant Cornelius Aaron Pettus, Jr.

By: /s/Clinton M. Campion.
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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct
copy of the foregoing was served
electronically via CM/ECF this 23rd day
of February, 2023 to:

Jeff Barber
jeffb@alaskainjury.com

/s/ Clinton M. Campion.
Certification signature